

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Wurtzel	Team: Team # 5	CCRB Case #: 201402854	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 03/22/2014 3:30 AM	Location of Incident: [REDACTED]	Precinct: 40	18 Mo. SOL 9/22/2015	EO SOL 9/22/2015	
Date/Time CV Reported Mon, 03/24/2014 9:58 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 03/24/2014 10:00 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM John Zorrilla	22991	933511	PSA 7
2. An officer			PSA 7
3. POM John Harkins	19811	936731	PSA 7
4. POM Tyler Ubben	22865	947559	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Anthony Rendo	14109	922852	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM John Zorrilla	Abuse: PO John Zorrilla entered § 87(2)(b) in the Bronx.	[REDACTED]
B.POM John Zorrilla	Force: PO John Zorrilla used physical force against § 87(2)(b)	[REDACTED]
C.POM John Zorrilla	Discourtesy: PO John Zorrilla spoke rudely to § 87(2)(b)	[REDACTED]
D. An officer	Abuse: An officer threatened to arrest § 87(2)(b)	[REDACTED]
E.POM John Harkins	Force: PO John Harkins used physical force against § 87(2)(b)	[REDACTED]
F.POM John Harkins	Discourtesy: PO John Harkins spoke rudely to § 87(2)(b)	[REDACTED]
G.POM John Harkins	Off. Language: PO John Harkins made remarks to § 87(2)(b) based upon gender.	[REDACTED]
H.POM John Zorrilla	Off. Language: PO John Zorrilla made remarks to § 87(2)(b) based upon race.	[REDACTED]
I. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon race.	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

### Case Summary

On March 22, 2014, at approximately 3:30 a.m., § 87(2)(b) was involved in a family dispute at the home of her mother, § 87(2)(b) at § 87(2)(b) § 87(2)(b) in the Bronx. PO John Zorrilla, PO John Harkins, PO Anthony Rendo and PO Tyler Ubben of Public Service Area 7 responded and entered the apartment (**Allegation A**). § 87(2)(b) also observed two FDNY EMTs who were identified as § 87(2)(b) and § 87(2)(b). PO Zorrilla allegedly grabbed § 87(2)(b)'s chin and lower face with one hand and squeezed while pushing her backwards. PO Zorrilla said, "Shut the fuck up," as he performed this action (**Allegations B and C**).

§ 87(2)(b) was handcuffed on the ground. § 87(2)(b) reacted to this by loudly calling out to her family that she was being assaulted. PO Zorrilla allegedly grabbed the hood of § 87(2)(b) sweatshirt and pulled her along the floor and out of the apartment (**Within Allegation B**). § 87(2)(b) was pulled twenty feet to the elevator but this action did not result in injuries. An unidentified officer told § 87(2)(b) that she would be arrested if she walked into the hallway (**Allegation D**).

§ 87(2)(b) was brought to the elevator and lifted to her feet. § 87(2)(b) alleged that PO Harkins slapped her twice in the back of the head and told her to "shut the fuck up." PO Harkins also called § 87(2)(b) a "black bitch" at this time (**Allegations E, F and G**). PO Zorrilla then allegedly said, "It's niggas like you why I have to pay so much taxes," (**Allegation H**). § 87(2)(b) was transported to § 87(2)(b) Hospital by PO Harkins and PO Zorrilla. § 87(2)(b) stated that one of these officers called her a "nigger" but could provide no further context and stated that she did not see the officer who made this comment (**Allegation I**) (encl. 4A-6F). § 87(2)(b) was released from the hospital later that day and charged with resisting arrest, obstructing government administration in the second degree, assault with intent to cause physical injury, disorderly conduct and harassment in the second degree. On February 24, 2015, this case was reassigned to the undersigned investigator for closing.

### Mediation, Civil and Criminal Histories

This case was not eligible for mediation. On May 29, 2014, § 87(2)(b) filed a Notice of Claim with the City of New York, claiming excessive force, civil liberties violations and malicious prosecution. § 87(2)(b) is seeking damages in relation to her medical expenses (encl. 16A-B) § 87(2)(b). § 87(2)(b) has no prior criminal convictions (encl. 17A).

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3A).
- PO Zorrilla has been a member of the NYPD for 11 years, has had three prior CCRB allegations involving two cases with no substantiated CCRB allegations. § 87(2)(g)
- PO John Harkins has been a member of the NYPD for 10 years, has had one prior CCRB allegation involving one case with no substantiated CCRB allegations. § 87(2)(g)
- PO Tyler Ubben has been a member of the NYPD for six years and has had no prior CCRB allegations (encl. 2C).

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

§ 87(2)(b) stated that she heard an officer warn § 87(2)(b) that she would be arrested if she attempted to follow the officers out into the hallway. § 87(2)(b) further alleged that an officer called her a “nigger” while she was being transported to § 87(2)(b) Hospital. § 87(2)(b) could not provide a description of the officer who threatened to arrest her mother as she was not looking in the direction of the officer at the time the comment was made. § 87(2)(b) further stated that she could not see the officer who called her a “nigger” while she was being transported and could not provide any evidence to indicate that the comment was made by an officer as opposed to an EMT.

The investigation did not obtain a statement from § 87(2)(b) concerning the threat of arrest and cooperating witnesses did not say that they heard any officer threaten to arrest anyone aside from § 87(2)(b). All officers and EMTs interviewed for this investigation denied making the offensive remark or hearing any other person on scene do so. Without additional witness statements, the investigation could not identify the officer or officers who made these statements. It is therefore recommended that allegations D and I be pleaded against ‘An officer’ from Public Service Area 7.

### **Recommendations**

#### **Allegation A – Abuse of Authority: PO John Zorrilla entered § 87(2)(b)**

##### **§ 87(2)(b) in the Bronx.**

It is undisputed that PO Zorrilla and three other officers entered the home of § 87(2)(b) on March 22, 2014.

§ 87(2)(b) stated that she had been arguing with her mother when she went into another room in the apartment to collect her belongings. § 87(2)(b) observed the presence of officers in the apartment when she returned to the front of the apartment. § 87(2)(b) stated that she had been arguing with her mother but that this was a strictly verbal altercation. EMT § 87(2)(b) stated that § 87(2)(b) opened the door for the responding officers. EMT § 87(2)(b) could not recall whether the officers were invited in but stated that no objections were raised when the officers entered (encl. 7A-D). EMT § 87(2)(b) could not recall who answered the door but stated that officers were permitted to enter and that he did not hear any objections to their entry into the apartment (encl. 8A-D).

PO Zorrilla stated that the door was opened by an unidentified black female who communicated that there was an incident occurring at the apartment and that she was not involved. This female then closed the door on the officers and did not answer when PO Zorrilla knocked a second time. PO Zorrilla opened the door and decided to step into the apartment when he observed a young child inside. PO Zorrilla stated that he made the decision to enter based on the fact that there was a child at the provided location of a violent crime (encl. 11A-M). While PO Harkins could not recall whether officers were invited into the location, he confirmed that officers had observed a young child inside of the location. PO Harkins could hear a loud verbal altercation between § 87(2)(b) and her mother inside of the apartment (encl. 12A-E). PO Rendo and PO Ubben corroborated PO Zorrilla’s account of the door being opened by a black female who walked away without providing the officer’s additional information. Both officers stated that this female did not object to the officer’s entering the apartment (encl. 13A-14C).

According to the 911 call relating to this incident, § 87(2)(b) called 911 and informed the operator that she was attacked by her daughter. § 87(2)(b) can be heard calling § 87(2)(b) a liar and accusing her of kicking her in her groin. § 87(2)(b) can be heard repeatedly saying, “Get out of my house.” § 87(2)(b) informed the operator that she was injured and needed an

ambulance (encl. 16A). The radio communications for the incident indicate that the dispatcher stated that there was an assault in progress and provided officers with the address for the incident location (encl. 16B). The Domestic Incident Report relating to this incident stated that § 87(2)(b) was kicked and subjected to verbal abuse by § 87(2)(b) and noted that § 87(2)(b) called the police to have § 87(2)(b) removed from her home (encl. 16L-N).

In order for an entry to be justified under the emergency doctrine, the police must have reasonable cause to believe that an emergency is at hand and there is an immediate need of their assistance for the protection of life or property, the search must not be motivated by intent to arrest or seize evidence, and there must be a reasonable basis, approximating probable cause, to associate the emergency with the area being searched. *People V. Musto*, (966 N.Y.2d 263 (2013)).

§ 87(2)(b) reported to a 911 operator that she had been the victim of a violent crime and stated that she wanted EMS sent to her home. While PO Zorrilla, PO Ubben and PO Rendo could not hear the sound of a physical struggle or yelling inside of the apartment, they were responding to a report of a violent crime at that location and were within their right to investigate the scene of the alleged incident. Additionally, the observation made by PO Zorrilla and PO Harkins that there were children inside of the apartment, reinforced the need for police assistance inside of the location. While all of the officers and both EMTs interviewed for this investigation stated that they were not explicitly told to enter, they all confirmed that the door was opened for them by a civilian inside of the apartment and there were no objections to their being on location by anyone aside from § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

**Allegation B – Force: PO John Zorrilla used physical force against § 87(2)(b)**

**Allegation C- Discourtesy: PO John Zorrilla spoke rudely to § 87(2)(b)**

**Allegation E – Force: PO John Harkins used physical force against § 87(2)(b)**

**Allegation F – Discourtesy: PO John Harkins spoke rudely to § 87(2)(b)**

**Allegation G: Offensive Language: PO John Harkins made remarks to § 87(2)(b) based upon gender.**

**Allegation H – Offensive Language: PO John Zorrilla made remarks to § 87(2)(b) based upon race.**

§ 87(2)(b) alleged that PO Zorrilla forcefully grabbed her by the chin and applied pressure to her face resulting in pain. § 87(2)(b) further stated that PO Zorrilla told her to “shut the fuck up” while performing this action. § 87(2)(b) alleged that PO Harkins lifted her to her feet after she was brought to the elevator and the slapped her twice in the back of her head. § 87(2)(b) further alleged that PO Harkins told her to “shut the fuck up” and called her a “black bitch” as he performed this action. § 87(2)(b) alleged that PO Zorrilla said, “It’s niggas like you why I have to pay so much taxes,” while she was being transported off of the premises.

EMT § 87(2)(b) and EMT § 87(2)(b) denied seeing PO Zorrilla or PO Harkins commit any of the above allegations and denied hearing them make any of the above remarks. EMT § 87(2)(b) and EMT § 87(2)(b) were interviewed over one year after the incident date. § 87(2)(g)

PO Zorrilla denied committing the above allegations and all officers interviewed for this investigation denied seeing PO Zorrilla perform the above action or make the discourteous and offensive remarks. PO Harkins denied committing the above allegations and all officers

interviewed for this investigation denied seeing PO Harkins perform the above action or make the discourteous and offensive remarks.

EMT § 87(2)(b) and EMT § 87(2)(b) transported § 87(2)(b) to § 87(2)(b) Hospital in the Bronx. § 87(2)(b) complained of pain to her left shoulder where she sustained a minor abrasion. The report notes that § 87(2)(b) abrasion was a result of noncompliance at the scene of the incident (encl. 15A). § 87(2)(b) medical records confirm that she had an abrasion on her left shoulder and was complaining of pain to that area. Medical staff noted that § 87(2)(b) condition improved while she was at the hospital. § 87(2)(b) was released at 10:45 a.m. that morning with instructions to return if her pain persisted (encl. 15B).

§ 87(2)(g)

**Allegation D – Abuse of Authority: An officer threatened to arrest § 87(2)(b)**

As noted above, § 87(2)(b) could not provide any description for the officer who told § 87(2)(b) that she would be arrested if she attempted to step into the hallway. None of the civilians interviewed for this investigation stated that they heard an officer threaten to arrest § 87(2)(b) and none of the officers interviewed for this investigation admitted to committing this allegation or hearing any other officer commit this allegation. § 87(2)(g)

**Allegation I – Offensive Language: An officer made remarks to § 87(2)(b) based upon race.**

As noted above, § 87(2)(b) could not provide any description for the officer who called her a “nigger” while she was being transported to the hospital. Additionally, § 87(2)(b) could not provide any evidence that the individual who made this comment was an officer and not an EMT. EMT § 87(2)(b) stated that he rode in the back of the ambulance and did not hear an officer call § 87(2)(b) a “nigger.” EMT § 87(2)(b) confirmed that he did not hear an officer call § 87(2)(b) a “nigger.” PO Harkins stated that he rode in the ambulance with § 87(2)(b) and added that he did not call § 87(2)(b) a “nigger” or hear any other officer do so. PO Zorrilla could not recall how § 87(2)(b) was transported to the stationhouse but stated that he did not call § 87(2)(b) a “nigger” and did not hear any other officer make this comment. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

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Pod: 2

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date